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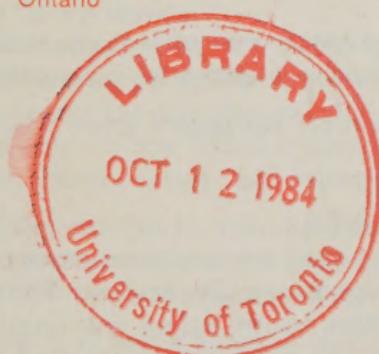
your rights & obligations under the Landlord and Tenant act

part IV
(residential premises)



Ministry of
the Attorney
General

Residential
Tenancy
Commission



Part IV of *The Landlord and Tenant Act* concerning residential tenancies, which was amended effective December 18, 1975, enhances tenants' security without sacrificing landlords' basic interests.

Court applications made prior to December 18, 1975, are governed by the Act as it was prior to the amendment.

This booklet is intended only as a guide — the Act itself should be consulted to interpret and apply the law.

Part IV covers residential tenancies *whether or not there is a written agreement*. If the agreement is in writing, a landlord must return a copy within 21 days of a tenant delivering a signed copy to the landlord. If the landlord doesn't meet the 21 day deadline, the tenant is not obliged to honor the agreement, including paying rent, until a copy is delivered.

A landlord and tenant may not renounce their rights under Part IV, either verbally or by written agreement.

SECURITY DEPOSITS

The landlord may demand a security deposit equal to the last month's rent. The landlord must pay the tenant 6 per cent interest annually, as long as he holds this money. When the tenant leaves, the last month's rent already is paid.

Security deposits to cover damages or repairs no longer are legal (except for fixed-term tenancies in mobile home parks that were made before December 18, 1975; the deposit for damages must be returned when the tenancy agreement is ended or renewed).

SEIZURE OF A TENANT'S PROPERTY

It is now an offence for a landlord to seize a tenant's personal property because the tenant is behind in the rent.

SUBLETTING OR ASSIGNING RENTED PREMISES

A tenant, other than one in public or subsidized housing, may sublet or assign the rental accommodation. However, the landlord may have reserved the right in the tenancy agreement to approve the new tenant. The landlord's consent may not be withheld unreasonably or arbitrarily, and the landlord may only charge reasonable and modest expenses for giving consent.

A landlord or tenant may apply to a judge of the county or district court to settle disputes over subletting or assigning premises.

RIGHT TO PRIVACY

Except in emergencies, a landlord or employees of the landlord may not enter the rented premises without giving 24 hours' written notice to the tenant, specifying a time during the day. However, a tenancy agreement may give the landlord the right to show the rented premises during reasonable hours, to a prospective tenant, after proper notice to move has been given. A tenant may also allow a landlord to enter the premises at the time of request.

Neither the landlord nor the tenant may change the lock on any door to the rented premises without each other's consent.

A landlord cannot keep political canvassers away from rented premises.

REPAIRS AND MAINTENANCE

Part IV requires a landlord to keep the rented premises in a good condition and fit for habitation during the tenancy. The landlord must also comply with all legal health, safety and housing standards, no matter what state the premises are in when a tenant moves in.

Tenants are responsible for ordinary cleanliness (good housekeeping) and for repairing any damages they or their guests cause wilfully or negligently.

Under the Act, a tenant may apply to a judge of the county or district court for an order to have repairs done, or to authorize repairs for which the tenant has paid. The judge may grant the tenant a decrease in rent for as long a time as the premises were improperly maintained.

In emergencies, the tenant may have *crucial* repairs done immediately and deduct the amount from the rent. Tenants must have detailed receipts for all work. Tenants should be aware of the risks involved in this approach because the landlord who does not accept the deduction from rent, may apply to the court, and the judge may order the tenant to repay the rent which had been withheld. The judge may even order the eviction of the tenant, unless the tenant can demonstrate that the repairs were necessary.

TERMINATING A TENANCY

Tenancies for a fixed period of time (fixed term) such as six months or one year or 18 months, no longer simply "run out", requiring the tenant to move out at the end of the term. Where such a tenancy comes to an end without the landlord or tenant having entered into a new tenancy agreement, the Act provides that the agreement has been renewed as a month-to-month tenancy until both parties agree to another term. Since tenancies will go on indefinitely, *landlords or tenants who want to end weekly, monthly, yearly or fixed-term tenancies of residential premises must notify each other in writing*.

A landlord and tenant may mutually agree in writing, during the tenancy, to terminate on a specific date, in which case there is no need for notice.

Giving Notice — What to Give

Notice from either the landlord or tenant must:

- *be in writing* and signed by the person giving notice, his or her agent, and should include the date of signing
- identify the premises for which notice is given
- specify the date the premises are to be vacated (the termination date)

Notice of termination *from a landlord* must also:

- state the reason and particulars for terminating the tenancy, and
- advise the tenant that if he or she intends to dispute the landlord's claim to possession, he or she need not vacate the premises, but that the landlord may regain possession by applying for an order permitting eviction from the clerk or the judge of the county or district court, and that the tenant is entitled to dispute the landlord's claim.

When to Give a Notice

Notice to end a tenancy by either landlord or tenant has to be given *not less than 28 days before the last day of a weekly tenancy, 60 days before the last day of a monthly, year-to-year or fixed-term tenancy*. If the notice is late by even one day, it is ineffective and notice must be repeated, in a proper fashion.

If a landlord intends to demolish, convert to other use, or extensively repair the premises, the landlord *must give at least 120 days notice before the end of the tenancy*.

A landlord may end a tenancy during the life of the agreement, for certain reasons and within special notice periods. (See below).

How to Serve It (and Any Other Documents Under Part IV of the Act) By the Tenant to the Landlord

A tenant may deliver the notice personally to the landlord, or his or her agent, or send it by ordinary mail. When sent by mail, *the Act assumes that it is delivered on the third day after the date of mailing.*

By a Landlord to a Tenant

A landlord **must** try to deliver a notice to the tenant personally. If the tenant is away or evading service, the notice may be handed to a person apparently 18 years or older on the tenant's premises, by posting it up in a conspicuous place on the rented premises or by sending it by registered mail to the premises. *If notice is mailed, it is assumed to be delivered on the third day after the date of mailing.*

Legitimate Reasons for Termination by the Landlord

A landlord **must** have a legitimate reason for terminating a tenancy, under Part IV of the Act. The reasons, along with particulars, must be stated in the notice, whether the termination is at the end of a tenancy period or term, or during the term.

Before the End of the Tenancy Period or Term

• Failure to Pay Rent

If a tenant fails to pay his rent when it is due, a landlord may give notice of termination, specifying a termination date not less than 20 days after notice is given. If the tenant pays the rent within 14 days of the notice, the notice becomes ineffective.

• Undue Damage

When a tenant, or his or her guests, causes undue damage to the premises, wilfully or negligently.

• Disturbing Others

When a tenant, or his or her guests substantially interferes with the reasonable enjoyment of the premises by the landlord or the other tenants.

• Impairing Privileges of Others

When a tenant, or his or her guests, seriously impairs the safety or other lawful right, privilege or interest of any other tenants on the premises.

• Overcrowding

When the number of occupants of the premises on a continuing basis exceeds that which is permitted by health, safety or housing standards.

If any of these *latter four reasons* is given, the landlord must give notice specified to be effective not less than 20 days after the date notice is given. The landlord must also inform the tenant that he has 7 days to correct the situation. If, within the 7 days, the tenant complies or satisfies the landlord that the situation will be corrected, the notice is ineffective. If the tenant does not rectify the situation within the 7 days, the landlord may apply, after the 7 days have expired, to the court for an order to evict the tenant.

If there is a *second breach* of these obligations by the tenant within a six-month period, the landlord need give only 14 days notice and may *immediately* apply to the court for an order permitting the tenant's *eviction*.

A Landlord Also Has Cause for Early Termination If:

• Illegal Act

A tenant performs or commits an illegal act, or carries on an illegal business on the premises.

• Misrepresenting Income in Public Housing

A tenant in public or subsidized housing knowingly misrep-

sents his or her income or that of other members of his or her family occupying in the residential premises.

Where the notice is based on one of *these two reasons*, the landlord must give notice specified to be effective not less than 20 days after the date the notice is given. The landlord may apply *immediately* to the court for an eviction order.

Termination by Landlord at the End of a Term or Rental Period

Each reason for ending a tenancy before the end of the term or rental period also applies to terminating at the end of a term or rental period. The Act recognizes additional causes for termination at the end of a term or rental period as follows:

- **Landlord's Own Use**

If the landlord needs the premises for himself or herself, or a member of his or her immediate family. (To qualify the landlord must give the tenant at least 60 days notice).

- **Persistent Late Rent**

The tenant has persistently failed to pay rent on the day it is due. (This cause applies even though the tenant may not be in arrears at the end of the term or period of the tenancy).

- **Ceasing to Qualify**

The premises are public or subsidized housing and the tenant no longer qualifies to occupy such premises.

- **Employment Ended**

The tenant was provided the residential premises by an employer and the tenant's employment is ended.

- **Failed Condominium Sale**

The tenancy arose by virtue of an agreement to purchase a proposed condominium unit, and the agreement fell through.

- **Demolition**

A landlord needs the residential premises for demolition, conversion to use other than rental-residential premises, or repairs or renovations so extensive as to require a building permit and vacant possession of the premises. (See below).

When the Landlord May Apply to Court

Where the landlord has given a tenant notice to termination at the end of the term or rental period, the landlord may *immediately* apply to the county or district court for an eviction order to be effective on or after the termination date in the notice. The landlord and tenant also may agree in writing to termination on a specified day. The landlord can enforce the agreement by applying to the court for an eviction order.

Demolition, Conversion From Rental Accommodation or Extensive Repair

In the event of demolition, conversion to use for a purpose other than rental-residential premises (e.g. condominium), or to make repairs or renovations so extensive as to require a building permit and vacant possession of the premises, *the landlord may give notice specifying a date at or after the end of a tenancy period, and not earlier than 120 days from the date notice is given.*

A tenant who gets such a notice has a number of choices:

- The tenant may comply

- The tenant may decide to move out on an earlier date, and if so, *the tenant must give the landlord at least 10 days written notice* prior to the time that he or she intends to vacate and pay up any arrears of rent to the date of termination (in the tenant's notice), taking into account any security deposit for rent which may be held by the landlord.

- The tenant may require the landlord to satisfy a judge that

his or her claim is valid, and that he or she has obtained all necessary demolition permits or other authority.

Where the notice relates to extensive repairs or renovations, the tenant may obtain the right of *first refusal* to occupy the premises as a tenant when the work is completed, *by indicating to the landlord in writing* that he or she wishes to have this right. To retain the right, the tenant must inform the landlord by registered mail of any change of address. The rent for the premises after the renovation or repairs must be at the lowest rent that would be charged to any other tenant for the same premises.

Caretaker's Premises

Special provisions apply to the termination of a tenancy by a caretaker, janitor, manager, watchman, security guard or superintendent. Unless otherwise agreed, the tenancy ends on the day that person's employment is ended. The "caretaker" has one rent-free week from that date in which to vacate the premises.

LANDLORD'S LEGAL REMEDIES

The landlord has a right to apply to the county or district court for an order declaring a tenancy ended, for an eviction order (writ of possession), for the payment of arrears of rent or compensation, or to enforce a tenant's notice of termination or a written agreement to terminate, as well as the right to apply for an order to have repairs done at a tenant's expense.

TENANT'S LEGAL REMEDIES

In addition to the right to apply for authorization for repairs, a tenant may apply to the court to end a tenancy or have the rent lowered if the landlord failed, in a significant way, to fulfill his or her obligations. The tenant may apply to the court for a return of a rent deposit and the related interest on that deposit.

GOING TO COURT

If landlords or tenants wish to enforce their legal remedies, they may apply to the county or district court. The party against whom the application is made will be notified of the application, and given an opportunity to challenge it in writing, or by appearing before the clerk of the court, in person, or through a representative. If the application is not disputed, notice of the order will be sent to the person against whom application was made. Landlords and tenants may now be represented before the judge by agents other than lawyers. Recent amendments to the Act are intended to encourage informality in these court hearings, by relaxing the strict rules of evidence.

EVICTIONS

A tenant may be evicted only by the sheriff and his officers, under the authority of a court order permitting eviction (a writ of possession).

MOBILE HOME PARKS

All of the provisions of the Act also apply to landlords of mobile home parks and owners of mobile homes (not travel or tent trailers) renting sites in these parks.

Tenants in these parks may sell, lease, or otherwise dispose of their mobile homes, even if the homes remain in the park. However, the landlord may have reserved the right in the tenancy agreement to approve a new tenant in his park. The landlord cannot unreasonably or arbitrarily withhold his consent to the new owners remaining as tenants in the park. The landlord is entitled only to charge reasonable expenses for giving his consent. Any dispute over landlord's consent may be referred to a county or district court judge.

The landlord is not entitled to act as the tenant's agent in the sale, rental or other disposal of the tenant's mobile home, unless there is a written contract to that effect.

Landlords no longer are permitted to charge entry and installation fees or removal exit fees for mobile homes from the park, or for the granting of a tenancy, except to recover reasonable expenses.

A landlord may not restrict the right of a tenant to purchase goods or services from a person of his or her choice. The landlord may, however, set reasonable standards for mobile home equipment.

Landlords are obliged to provide garbage disposal, snow removal and maintain roads and services within the mobile home parks. Tenants may apply to the county or district court to have these obligations enforced.

NOTICE OF RENT INCREASES

The Landlord and Tenant Act and *The Residential Tenancies Act, 1979* require that a landlord give a tenant 90 days' written notice before a rent increase, regardless of amount, can be imposed. This notice should be in a prescribed form (Notice of Rent Increase, Form 1), setting out the effective date of increase and the amount of the proposed rent increase, expressed in dollars per month and as a percentage of the current rent.

Regardless of amount, the proposed rent increase may be subject to review by The Residential Tenancy Commission under Part XI of *The Residential Tenancies Act*, which limits the amount of frequency of rent increases in certain types of residential accommodation.

Unless the tenant decides to move out and gives proper written notice, the tenant is deemed to have accepted the amount of rent increase permitted by law. For those rental premises not subject to Part XI of *The Residential Tenancies Act*, this would be the amount of increase specified in the notice, or any other amount agreed to between the landlord and tenant. For those rental premises subject to Part XI, this would be the amount of increase that does not exceed the amount allowed under Part XI.

However, the deemed acceptance of a rent increase, by signing a tenancy agreement, or by not responding to the landlord's notice of rent increase by giving the landlord a notice of termination, does not waive the tenant's right to take whatever actions may be available to the tenant under Part XI of *The Residential Tenancies Act* for the review of the proposed rent increase.

PROTECTION FOR THE TENANT'S SECURITY

It is an offence for a landlord to harass a tenant out of the premises, or to interfere with the supply of vital services, such as heat or electricity, while the tenant is in occupation.

A judge *will refuse* a landlord an order permitting eviction if the court finds that the landlord:

- Has not lived up to his or her fundamental obligations
- Wants to evict a tenant because he or she has complained to authorities about the landlord's violation of health, safety or housing laws
- Is retaliating against a tenant who sought to exercise his or her legal rights
- Wants to evict a tenant because he or she belongs to a tenant's association or is trying to organize one
- Wants to evict a tenant because of the presence of children (except in cases of overcrowding or premises unsuitable for children).

A group of tenants sharing a common problem with a landlord may, if a judge approves, jointly take that landlord to court. Conversely, a landlord may take a group of tenants to court, if a judge approves.

POSTING THE ACT

Landlords of residential premises with more than one unit and common facilities, such as a lobby, and landlords of mobile home parks, are required to post a copy of Part IV of *The Landlord and Tenant Act* in a conspicuous place.

The legal name and address of the landlord, for service, also must be posted. Tenants may take landlords to court in the name which is posted.

PENALTIES

The Landlord and Tenant Act now provides for fines of up to \$2,000 for offences under the Act. Such offences *include* interference with vital services, failure to post a copy of Part IV and the legal name and address of the landlord, seizure of the tenant's property for non-payment of rent, and wrongful entry of the rented premises by the landlord.

For more information on the Landlord and Tenant Act, Part IV, contact your local office of the Residential Tenancy Commission. Consult the Ontario Government blue pages section of your local telephone directory for the office which serves you.

Copies of the Landlord and Tenant Act can be purchased for \$2.00 from the Ontario Government Bookstore, 5th floor, 880 Bay Street, Toronto, M7A 1N8

A cheque or money order made payable to the Treasurer of Ontario must accompany mail orders.

Telephone orders are also accepted with Mastercard or Visa. Phone (416)965-6015, or 1-800-268-7540, for toll-free long distance service. In area code 807, call the operator for Zenith 67200.



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